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Kurki, Visa Anton Julius

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Drawing the Borders of Animal Law

Visa AJ Kurki*

“Animal law” can be understood either as an area of law or as a branch of legal scholarship. However, it is relatively unclear what either exactly comprises. This short piece is thus an attempt to provide some highly preliminary thoughts on the definition of animal law. To render clear the difference, I will take “animal law” to refer to the area of law and “animal law scholarship” to refer to the branch of legal scholarship.

I take the question “What is animal law as an area of law?” to be primary, whereas the question “What is animal law scholarship?” depends on the answer to the former question. Animal law scholarship is about the studying of animal law, whatever animal law is.

The difficulty in defining animal law is that definitions can easily be too broad, too vague or too narrow. One very broad definition can be found on the website of the Animal Legal Defense Fund, according to which “animal law is the combination of statutory and case law that relates to or has an impact on non-human animals”.¹ According to this definition, a legal provision must either “relate to” or “have an impact” on animals in order to qualify as animal law. However, the concept of “relating to” is vague. When exactly does a legal provision relate to animals? Furthermore, virtually any statute or case can have some kind of impact on nonhuman animals.

On the other hand, defining animal law simply in terms of animal protection law is too narrow in scope. For instance, the special rules of tort concerning harm caused by owned animals do seem – to me – to fall under animal law, yet they are clearly not intended to protect animals.

A more promising definition is offered by the National Anti-Vivisection Society, according to which animal law “is a combination of statutory and case law in which the nature of non-human animals, whether legal, social or biological, is an important factor”.² I will offer a somewhat similar definition. My highly preliminary suggestion would be to define animal law primarily in terms of *animal distinctiveness*. A legal provision must recognize animal distinctiveness in order to qualify as animal law. What I mean by animal distinctiveness is the special features of animals that distinguish them from eg plants, rocks and other natural objects. These include animals’ capacity for suffering and pleasure; their capacity to form bonds with human beings; their capacity for independent action etc.

Let us take an example. Western family law has traditionally treated pets like any type of property. Thus, in the case of divorce, animals have not been treated differently from, say, books or family heirlooms. However, insofar as the modern family laws of some countries have started treating pets as a special category – thus, for instance, deeming the pet to belong to the party who shares a deeper bond with it – they have started recognizing animal distinctiveness. These legal systems have recognized the distinct capability of animals to form bonds with humans.

Further to legal provisions recognizing animal distinctiveness, there may be some areas of law that warrant the label of animal law because of their direct and significant impact on the lives of animals. Such

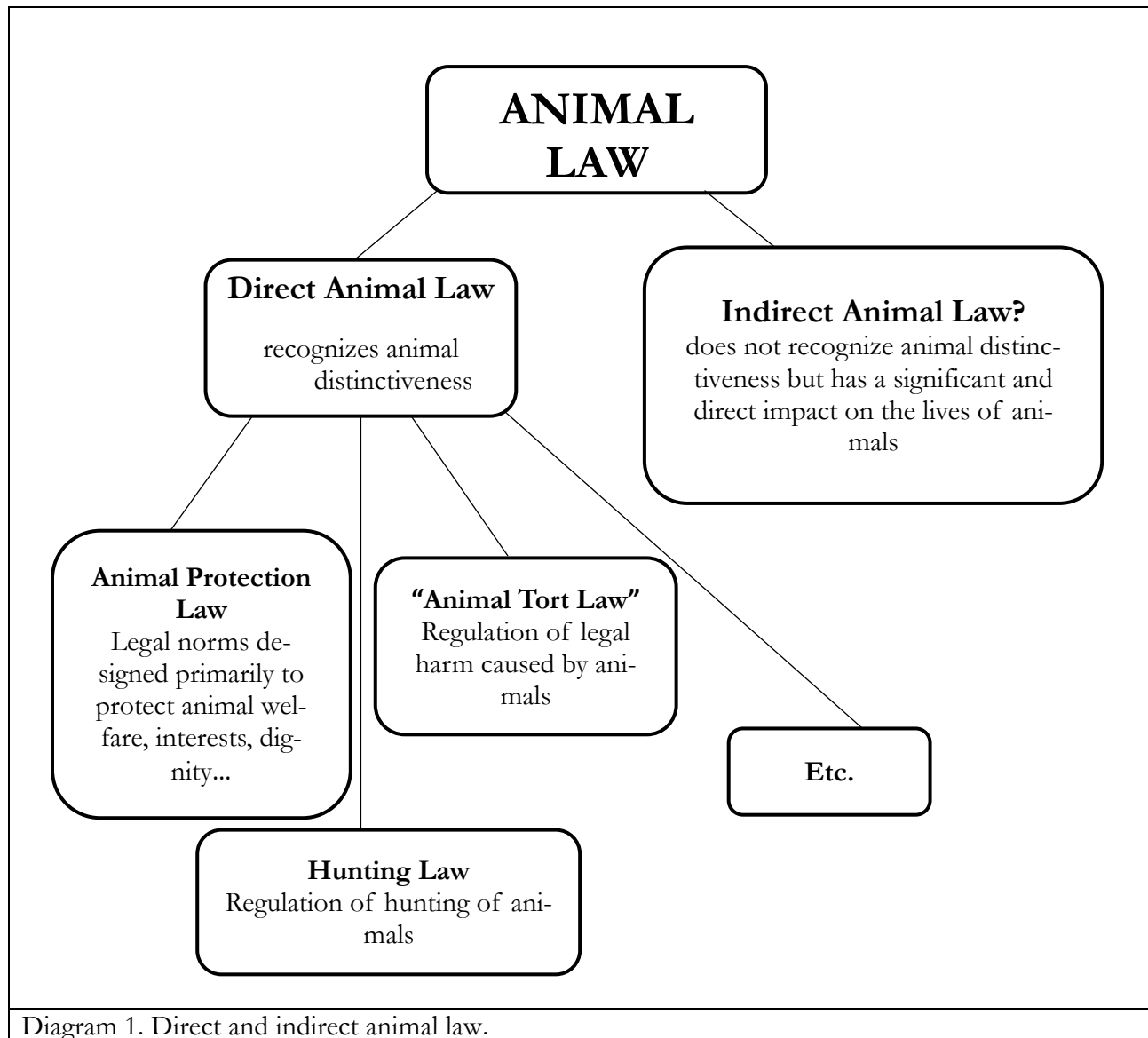
* Dr Visa AJ Kurki is a Fellow at the Helsinki Collegium for Advanced Studies.

¹ Animal Legal Defense Fund, ‘Animal Law 101: An Overview of Animal Law’ <<https://aldf.org/article/animal-law-101/>> accessed 21 February 2019.

² National Anti-Vivisection Society, ‘What is Animal Law?’ <<https://www.navs.org/what-we-do/keep-you-informed/legal-arena/general-introduction/what-is-animal-law/>> accessed 21 February 2019.

areas of law might be termed “indirect animal law”, whereas law recognizing animal distinctiveness may be labelled “direct animal law”. This division is illustrated in Diagram 1.

Direct animal law comprises various areas of law. Perhaps the most significant one is animal protection law. The animal protection laws of most countries aim to protect animals from the infliction of suffering and to promote their welfare. However, animal protection law can also include for instance dignity-based approaches, as with the Swiss Constitution’s recognition of the dignity of living beings.³



³ Article 120 of the Federal Constitution of the Swiss Confederation (*Bundesverfassung der Schweizerischen Eidgenossenschaft*).